

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

| | | |
|---|---|--------------------|
| JOSE LUIS GARZA |) | |
| Claimant |) | |
| VS. |) | |
| |) | Docket No. 179,344 |
| TEETER IRRIGATION COMPANY |) | |
| Respondent |) | |
| AND |) | |
| |) | |
| CNA INSURANCE COMPANIES |) | |
| Insurance Carrier |) | |
| AND |) | |
| |) | |
| KANSAS WORKERS COMPENSATION FUND |) | |

ORDER

One of the attorneys for claimant appeals a May 2, 1996, Order entered by Administrative Law Judge Jon L. Frobish. The Appeals Board heard oral argument on September 12, 1996.

APPEARANCES

This involves a dispute between claimant's present and former counsel regarding attorney fees. Claimant appeared by his present attorney, C. Albert Herdoiza of Kansas City, Kansas. Also appearing was claimant's prior attorney, Michael V. Madden of Wichita,

Kansas. Respondent and its insurance carrier appeared by their attorney, D.Steven Marsh of Wichita, Kansas. There were no other appearances.

RECORD

The Appeals Board reviewed the transcript of proceedings held on April 9, 1996, the transcript of settlement hearing held on November 22, 1995, and the other documents contained in the administrative file of the Division of Workers Compensation.

STIPULATIONS

No stipulations were entered by the parties for purposes of the issues set forth below.

ISSUE

Claimant and claimant's present attorney, C. Albert Herdoiza, appealed the May 2, 1996, Order by the Administrative Law Judge apportioning costs of the April 9, 1996, hearing on the Motion filed by claimant's previous attorney, Michael V. Madden, to determine his lien rights. The issue before the Appeals Board is whether the Order by the Administrative Law Judge assessing the reporter's fees for transcription of the proceedings, one-half each to Mr. Madden and Mr. Herdoiza is appropriate.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments and briefs of counsel, the Appeals Board finds:

The Order of the Administrative Law Judge should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Jon L. Frobish dated May 2, 1996, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: C. Albert Herdoiza, Kansas City, KS
Michael V. Madden Wichita, KS
Steven L. Foulston, Wichita, KS
D. Steven Marsh, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director

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ORDER

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RECORD

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STIPULATIONS

No stipulations were entered by the parties for purposes of the issue set forth below.

ISSUE

The issue is the appropriate attorney fees for Michael V. Madden.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments and briefs of counsel, the Appeals Board finds:

The Order of the Administrative Law Judge should be modified as follows:

Michael V. Madden shall receive attorney fees in this matter in the sum of \$1,000 plus expenses of \$150.91, which amount does not include the \$250 paid to Jerry D. Hardin. In addition, Michael V. Madden shall receive as attorney fees, a sum equal to 25 percent of the temporary total disability compensation paid to claimant for those weeks of temporary total disability beginning March 18, 1994, and continuing thereafter until such temporary total disability compensation payments ceased.

IT IS SO ORDERED.

Dated this ____ day of September 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: C. Albert Herdoiza, Kansas City, KS
Michael V. Madden Wichita, KS
Steven L. Foulston, Wichita, KS
D. Steven Marsh, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director